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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

B207529

Plaintiff and Respondent,

(Los Angeles County Super. Ct. No. LA048968)

v.

RENE OSCAR ALVARADO,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Curtis B. Rappe, Judge. Affirmed.

Charlotte E. Costan, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Steven D. Matthews and Shawn McGahey Webb, Deputy Attorneys General, for Plaintiff and Respondent.

Rene Oscar Alvarado (Alvarado)¹ appeals from a judgment entered after a jury returned a verdict of guilt against him for count 1, conspiracy to commit murder (Pen. Code, § 182, subd. (a)(1))² and count 2, murder (§ 187, subd. (a)). The jury found true the allegation that Alvarado and his codefendants committed the murder for financial gain within the meaning of section 190.2, subdivision (a)(1). The jury also found true the allegation as to both counts that a principal was armed with a firearm within the meaning of section 12022, subdivision (a)(1).

The trial court sentenced Alvarado to life without possibility of parole on count 2, plus one year for the firearm enhancement. The sentence of 25 years to life plus one year for the firearm enhancement on count 1 was imposed and stayed pursuant to section 654. We affirm the judgment.

CONTENTIONS

Alvarado contends that: (1) his convictions must be reversed because they are not supported by substantial evidence; (2) the trial court erred in denying his request for appointment of a psychologist to examine Alvarenga; and (3) the trial court erred in refusing his request for a pinpoint instruction that the alleged overt acts were not proven facts.

Codefendants Wilson Sanchez (Sanchez), Maria Quijano (Quijano), Pablo Anthony Alvarenga (Alvarenga), and Erik Monroy (Monroy) are not parties to this appeal. Alvarado, Sanchez, and Quijano were tried separately and each have appeals pending before this court. Monroy and Alvarenga pled guilty to voluntary manslaughter in exchange for their testimony. Monroy and Alvarenga received 22-year prison terms.

All further statutory references are to the Penal Code section unless otherwise indicated.

FACTS AND PROCEDURAL BACKGROUND

The murder and subsequent investigation

Viewing the whole record in the light most favorable to the judgment below as we must (*People v. Ceja* (1993) 4 Cal.4th 1134, 1138-1139), the evidence established the following.

Quijano was married to Reynaldo Quijano (Reynaldo). On April 10, 2005, Reynaldo was shot to death in the early morning hours as he was stopped at an intersection in his brown Mercedes near Stagg Street in Sun Valley. Silvia Tejeda (Tejeda), who was returning home from work to Stagg Street between 12:10 and 12:15 a.m., noticed a van with a covering on the driver's side rear window. The van was parked in a red zone under a street light. She parked her car, then heard three gunshots as she opened her door. She ran to her house and saw a young man wearing a black hooded sweatshirt running toward the intersection. The van also moved toward the intersection and that man entered the passenger side of the van. The van turned and drove past Tejeda. She noticed a car stopped at the intersection with the lights on, and a man's body hunched over the steering wheel inside the car. Tejeda called 911. Ethan Selzer, who lived two houses down from Reynaldo, heard three to five gunshots at 12:13 a.m. from the intersection of Stagg Street and Arcola. He then heard a vehicle accelerate away.

Los Angeles Police Department Officer Martin Higuera, who responded to the scene of the crime, found a gas bill near Reynaldo's car addressed to Cecilia Arias (Arias). Fresh vehicle fluid was on the ground in the same area where the bill was found. Four expended nine-millimeter shell casings were found in the street, and a nine-millimeter bullet was recovered from the driver's seat of the Mercedes. A medical examiner determined that Reynaldo died of multiple gunshot wounds.

On April 13, 2005, Los Angeles Police Department detectives drove to Arias's house and found a brown van parked nearby. Fingerprints matching those of codefendants Alvarenga, Monroy, and Sanchez were later lifted from the brown van. Pedro Villegas (Villegas), Sanchez's stepfather, was the owner of the van. He had loaned

it to Sanchez in April 2005. The van leaked power steering fluid and had a broken rear window on the driver side that Villegas had taped over with plastic.

On April 20, 2005, detectives surveilled the van as Sanchez, Joe Martinez, and Alvarenga drove to a Department of Motor Vehicles office.

Claudia Jimenez (Jimenez) testified that Arias is her mother and Sanchez is her boyfriend. At the time of the murder, Sanchez lived with her at her mother's house. Shortly before the murder, Jimenez gave Sanchez a utility bill so that he could get a library card. Jimenez admitted that she and Sanchez socialized with William Bailey (Bailey), visiting him over 40 times.

Tony Torres (Torres) testified that on April 9, 2005, he was with Alvarenga at a parking lot on 84th Street. An older, dark-skinned, Hispanic man who looked like Alvarado approached them and began talking to Alvarenga. Sanchez drove up in a brown van. Monroy also joined them. The older man, Sanchez, Monroy, and Alvarenga spoke together. Torres followed them to a parked car. After the older man left, Sanchez, Monroy and Alvarenga talked about getting a gun to do a mission to make some money. Sanchez invited Torres to join them, but José Luis (Luis) drove up, and Torres got into his car. Torres saw Sanchez, Monroy, and Alvarenga drive away in the brown van.

Bailey testified that in April 2005, he was visited by Sanchez, who gave him a sealed envelope, containing about \$9,000 cash, to keep safe. Bailey joined Sanchez, Monroy, and Alvarenga in Sanchez's van where they drank beer and smoked marijuana. Sanchez first told Bailey that they robbed someone for the money. Then he said they killed a man on behalf of a woman who wanted her husband murdered. He told Bailey that they waited for the victim to come out and then shot him. They got paid for the murder. Bailey gave the envelope back to Sanchez when they dropped him off at his home.

Felix Penate (Penate) purchased a cell phone for Alvarado, who was his wife's uncle. On April 27, 2005, a surveillance team followed Alvarado from his home to his place of employment. A detective called Alvarado at the cell phone number for the

phone purchased by Penate. Alvarado answered the call and the detective hung up. Pursuant to a search warrant for cell phone records, detectives ascertained that Quijano's cell phone had exchanged telephone calls with Alvarado's cell phone 30 times on April 9 and April 10, 2005. Most of those calls occurred in the 60 minutes prior to and after the shooting. Records showed that Alvarado's cell phone exchanged calls with Alvarenga's mother, Monroy's mother, and Monroy's girlfriend the evening of the murder. According to Verizon's phone records, Quijano's cell phone remained in the same location the entire evening. Alvarado's cell phone was in the vicinity of Alvarado's home prior to the murder, then traveled to the area of Quijano's Sun Valley home at the time of the murder, before heading back to Alvarado's home.

On April 28, 2005, officers recovered the cell phone in question while conducting a search of Alvarado's apartment pursuant to a search warrant. Officers also recovered a medical appointment card with Quijano's address on it. Alvarado was arrested, waived his right to remain silent, and consented to an interview. The recorded interview was played for the jury. Alvarado admitted ownership of the cell phone as well as a Honda Civic. He said that on the night of the murder he had been watching television with friends. He said he had his cell phone with him that night and that he had talked to Quijano about a debt that Alvarado's son owed to her. When confronted with evidence showing the movement of his cell phone, he claimed that his cell phone had been stolen by a Hispanic man who brandished a gun, demanded his phone, and ordered him to get into a brown van. He said that later the man returned, threw the phone at him, and said "I did it." He was unable to explain the number of calls from his cell phone to Quijano's cell phone or how Sanchez could have known how to get to Quijano's house. He stated he was not ready to tell the truth.

Alvarado was interviewed again the next day. The recorded interview was played for the jury. Alvarado said that Quijano asked him to help her find someone to kill Reynaldo. After asking one man at a gas station how much it cost to kill a man and unsuccessfully approaching another man, Alvarado and Quijano decided on a \$8,000 fee.

Alvarado approached Alvarenga to kill Reynaldo. Sanchez heard the conversation and offered to do the job. Alvarado hired Sanchez and called Quijano to tell her that he found someone to do the job. Alvarado showed Sanchez \$8,000 in cash, gave him directions, and provided him with a photograph of Reynaldo. After Sanchez left, Alvarado called Quijano to tell her the killer was on his way. When Sanchez returned and demanded the money, Alvarado refused to pay because he knew Reynaldo was not dead. Alvarado instructed Sanchez to complete the job and gave him his cell phone. On his return, Sanchez handed the cell phone to Alvarado. Quijano confirmed that Reynaldo was dead and told Alvarado to pay Sanchez. Alvarado paid Sanchez \$8,000. Alvarado said he felt better and calmer because he told the truth.

Accomplice testimony of Alvarenga

Alvarenga testified that he was a friend of Sanchez and Monroy. On April 9, 2005, Alvarado walked up to Alvarenga as he was with Torres at a parking lot on 84th Street. Alvarado told Alvarenga a woman wanted a man killed by 8:00 or 9:00 p.m. that evening. She was willing to pay \$8,000 for the murder. Sanchez and Monroy then joined them and discussed the killing. Alvarado gave Sanchez a photograph of Reynaldo. Sanchez accompanied Alvarado to his apartment and determined that he had the promised money. Sanchez agreed to murder Reynaldo and asked the others to join him. Sanchez told them that Reynaldo drove a brown Mercedes. Sanchez, Monroy, and Alvarenga drove to Alvarenga's apartment to get a black sweatshirt for Sanchez. They then drove to the house of a man named Yoda and got a gun. Alvarenga fired the gun out the window to make sure it worked. Monroy drove to Reynaldo's residence and parked the van across the street, waiting for Reynaldo to arrive. Reynaldo arrived between 8:00 p.m. and 9:00 p.m. as instructed, but they missed their opportunity to kill Reynaldo. They returned to Alvarado's apartment. Sanchez tried to get the money by telling Alvarado that they had killed Reynaldo, but Alvarado telephoned Quijano, who said Reynaldo was asleep in the house.

Alvarado gave Sanchez his cell phone. Sanchez, Monroy and Alvarenga drove back to Reynaldo's residence. Using Alvarado's cell phone, Sanchez spoke to Quijano, who told him that she wanted Reynaldo killed because he had raped her daughter. She told Sanchez that she was paying Alvarado \$20,000 or \$25,000. She told him that she would wake Reynaldo up and have him go out to buy something. She planned to leave the porch light on so that Sanchez and the others could see the house. Quijano told them to call her when they arrived. Monroy and Alvarenga used the cell phone to call their mothers.

Sanchez called Quijano when they arrived. A few minutes later, Reynaldo came out of the house. Sanchez, who had been driving, got out of the car, and told Monroy to get into the driver's seat. Sanchez exited the van and walked toward Reynaldo. Monroy drove the van to the middle of the intersection. Sanchez walked up to Reynaldo and shot him three times. Sanchez ran back to the van and jumped in. They drove off. Sanchez talked to Quijano on the cell phone. Quijano told him to have Alvarado call her to confirm the murder.

They then drove to Alvarado's apartment, where Sanchez collected the money. He gave \$540 each to Monroy and Alvarenga. They dropped the gun off at Alvarenga's apartment. They drove to Bailey's house where Sanchez gave him an envelope containing \$7,000 or \$8,000 to keep safe. Sanchez told Bailey he got the money for killing someone. Bailey joined them in smoking marijuana at a park.

After the murder, Sanchez, Alvarenga, and Monroy bought shoes and clothes. Sanchez bought a green Camry, a mini motorcycle, and a cell phone. Later, Alvarenga accompanied Sanchez and Martinez to pick up the Camry from impound. Yoda came to Alvarenga's apartment to collect the gun.

Accomplice testimony of Monroy

Monroy testified that he was friendly with Sanchez, Alvarenga and Bailey. Sanchez drove a brown van that leaked fluid and had a broken window that was taped up. On April 9, 2005, Monroy went to a parking lot on 84th Street. At the parking lot he saw

Torres and Luis inside a white Honda. Monroy saw Sanchez and Alvarenga talking to Alvarado. Sanchez accompanied Alvarado to his apartment, then returned saying that he had seen the money. Sanchez told Monroy that Alvarado wanted him to kill someone for \$8,000. Alvarado went to his green Honda Civic, then pulled Sanchez aside. Alvarado left. Sanchez showed Monroy and Alvarenga a picture of Reynaldo and said that Reynaldo drove a brown Mercedes. Sanchez said he would do the job for \$8,000. The job had to be done that night, because Reynaldo was leaving town the next day. Monroy joined the group after Sanchez said he would let them down if he did not go with them. They drove to Alvarenga's house for a black sweatshirt and gloves, and to Yoda's house to pick up a gun. Alvarenga fired the gun to test it.

They drove to Reynaldo's house, but missed the opportunity to kill Reynaldo because Monroy drove past the house when Reynaldo arrived home. They returned to Alvarado's apartment. Alvarado voluntarily gave Sanchez a cell phone. Sanchez never threatened Alvarado in order to get the phone. Monroy used the phone to call his mother. While Monroy was on the phone with his mother, Quijano called and asked to speak to the shooter. Monroy gave the cell phone to Sanchez. Sanchez told the others that Quijano said she wanted Reynaldo killed because he had raped her three-year-old daughter. Sanchez told Monroy and Alvarenga that he was going to give them \$1,000.

On the way back to Reynaldo's residence, Monroy called his girlfriend and Alvarenga called his mother on Alvarado's cell phone. After they parked, Sanchez called Quijano. Monroy then saw Reynaldo enter the Mercedes. Sanchez ran up and fired a few times at the driver's side, then ran back to the van. They dropped the gun off at Alvarenga's house, then picked up the money from Alvarado. Monroy and Alvarenga received \$540 each. They left the money at Bailey's residence, then went to smoke marijuana in a park. Monroy later saw Sanchez with a green Camry, a mini bike, and a cell phone.

The trial court's denial of Alvarado's request for an expert's report and expert testimony

On February 19, 2008, a few days after trial began, Alvarado's counsel brought to the trial court's attention a report that indicated that Alvarenga had an IQ of 72. The report was generated by a doctor who was no longer available, as support for Alvarenga's request to the district attorney's office that it not seek the death penalty. Alvarenga's attorney then gave a copy of the report to all counsel. Alvarado's counsel stated that he wanted to obtain medical opinions before cross-examining Alvarenga. The next day, February 20, 2008, Alvarenga's cross-examination was deferred upon Alvarado's request to get "some kind of statement from somebody." Alvarado's counsel stated that Alvarenga's competence was not at issue, but that the jury should be informed of the factors causing Alvarenga's mental sluggishness. The People stated that the report indicated that Alvarenga was bilingual, was able to think clearly and coherently, was responsive to all questions without prompting, and that his cognitive skills, such as concentration, comprehension and memory, were intact. Although Alvarenga scored low on some tests, he scored high on others in comparison to persons his age with the same education.

The trial court found that it had observed Alvarenga in two related previous trials and that an expert would not give the jurors any insight regarding Alvarenga since his mental deficits were readily apparent. The trial court tentatively decided to allow Alvarado's counsel to consult with a psychologist, then conduct further cross-examination of Alvarenga, if necessary.

On February 21, 2008, Alvarado's counsel informed the trial court that he had located a psychologist willing to test Alvarenga on February 22, 2008. Alvarado's counsel decided that he wanted to cross-examine Alvarenga prior to presenting the defense case, and reserve the right to further cross-examination.

As an offer of proof, Alvarado's counsel stated that the expert would testify as to the relevance of Alvarenga's testimony, his credibility, and his ability to appreciate reality. The trial court commented that the use of psychiatric testimony to impeach a witness is generally disfavored and concluded that a psychiatric or psychological evaluation would not assist the jury. After further discussion, the trial court ordered Alvarado's counsel to commence cross-examination before it ruled on whether the expert could testify.

On February 22, 2008, Alvarado's counsel renewed his motion for the appointment of a psychologist. The trial court denied the motion, finding that on cross-examination Alvarenga had admitted: to all the mental deficits contained in the report; to not having a good memory; that he dropped out of school; that he had a sporadic work history; that he smoked marijuana on a regular basis; and that he gave prior inconsistent statements to the police. The trial court noted that Alvarado's counsel had not been prevented from consulting with a psychologist to make an offer of proof to the trial court and that the jury was well equipped to evaluate Alvarenga's deficits.

Alvarado's defense

Alvarado testified in his defense, denying that Quijano asked him to find someone to kill her husband or that he hired Sanchez to kill Reynaldo. He testified that Quijano gave him \$8,000 to hold for her. Alvarado stated that he met Sanchez one day while he was talking on the phone with Quijano. Quijano asked him to put Sanchez on the cell phone. Sanchez returned the cell phone to Alvarado after speaking to Quijano. Sanchez then asked to see the \$8,000. Alvarado denied giving Sanchez a photograph of Reynaldo. He admitted giving Sanchez directions to Quijano's house. Later, he gave \$8,000 to Sanchez at Quijano's request. He testified that his previous statements were made-up stories to the police. He only told the police what they wanted to hear and they were all mixed up.

DISCUSSION

I. Substantial evidence supports Alvarado's conspiracy and special circumstance murder convictions

Alvarado contends that his conspiracy and special circumstance murder convictions must be reversed because (1) "not an iota of objective or forensic evidence connected [Alvarado] to the crime;" (2) "not one of the prosecution's felonious, lying trio was credible, and all of them benefitted from their testimony;" and (3) "there is insufficient corroborative evidence to establish guilt beyond a reasonable doubt." We disagree.

In reviewing the sufficiency of the evidence, the appellate court must "review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citations.]" (*People v. Ceja, supra*, 4 Cal.4th at pp. 1138-1139.)

Section 1111 provides that the testimony of an accomplice must be corroborated by evidence that connects the defendant with the commission of the offense. Corroborating evidence need not by itself establish every element of the crime, nor need it corroborate the accomplice as to every fact to which he testifies, but is sufficient if it does not require interpretation and direction from the testimony of the accomplice yet tends to connect the defendant with the commission of the offense in such a way as reasonably may satisfy a jury that the accomplice is telling the truth. (*People v. Garrison* (1989) 47 Cal.3d 746, 773; *People v. McDermott* (2002) 28 Cal.4th 946, 986.) "'The trier of fact's determination on the issue of corroboration is binding on the reviewing court unless the corroborating evidence should not have been admitted or does not reasonably tend to connect the defendant with the commission of the crime.' [Citation.]" (*People v. Abilez* (2007) 41 Cal.4th 472, 505.)

A conspiracy consists of two or more persons conspiring to commit any crime. (§ 182.) The defendant and another person must have the specific intent to agree or conspire to commit an offense, as well as the specific intent to commit the elements of that offense, together with proof of the commission of an overt act by one or more of the parties to the agreement in furtherance of the conspiracy. (§ 184; *People v. Russo* (2001) 25 Cal.4th 1124, 1131.) "In proving a conspiracy, however, it is not necessary to demonstrate that the parties met and actually agreed to undertake the unlawful act or that they had previously arranged a detailed plan. The evidence is sufficient if it supports an inference that the parties positively or tacitly came to a mutual understanding to commit a crime. Therefore, conspiracy may be proved through circumstantial evidence inferred from the conduct, relationship, interests, and activities of the alleged conspirators before and during the alleged conspiracy." (*People v. Prevost* (1998) 60 Cal.App.4th 1382, 1399.) Murder is the unlawful killing of a human being with malice aforethought. (§ 187, subd. (a).) First degree murder, as pertinent here, is perpetrated for financial gain. (§ 190.2.)

First, Alvarado contends "not an iota of objective or forensic evidence connected Alvarado to the crime." He complains that there was no evidence connecting Alvarado to the murder weapon or the utility bill, his fingerprints were not found in the van, and he did not have his telephone on his person when Reynaldo was shot. But, "[i]t is well settled that, absent physical impossibility or inherent improbability, the testimony of a single eyewitness is sufficient to support a criminal conviction." (*People v. Allen* (1985) 165 Cal.App.3d 616, 623.) Here, as we will discuss, there was sufficient evidence connecting Alvarado to the crime.

Second, Alvarado attacks the credibility of Monroy and Alvarenga based on their past criminal records and history of lying to the police during the course of the investigation. Alvarado also attacks Bailey's credibility on the basis that he was threatened with a charge of being an accomplice after the fact and that he tried to recant a statement he made to detectives. With respect to Monroy and Alvarenga, convictions

may be based on accomplice testimony if the testimony is corroborated with evidence tending to connect the defendant to the crime, and the jury was so instructed. (§ 1111.) As we will discuss, their testimony was sufficiently corroborated. Also, it is the exclusive province of the jury to determine the credibility of the witness, and the jury was instructed that it must judge the credibility or believability of the witnesses, taking into consideration, among other things, a promise of immunity. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206). The jury could well have determined that Alvarado was not a credible witness compared to Monroy, Alvarenga, and Bailey.

Third, Alvarado contends that the accomplices' testimony was not sufficiently corroborated. He complains that: neither Monroy nor Alvarenga spoke directly to Alvarado; Bailey got details of the homicide only from Sanchez; Alvarado gave evasive and conflicting responses when interrogated; Torres did not get a clear enough look at the Hispanic man who spoke to Alvarenga to identify him as Alvarado; Tejeda did not connect Alvarado with the killing; the People did not establish a nexus between the weapon or ammunition with Alvarado; the cell phone calls between Alvarado's phone and Quijano's phone were a normal event; and Alvarado did not possess the cell phone when many of the calls between his phone and Quijano's phone were made. Alvarado also urges that: the corroborating evidence merely connected Alvarado with the perpetrators and not the crime; his own evasive and conflicting responses were insufficient to establish guilt aside from accomplice testimony; and the corroborating evidence only established that Alvarado had the opportunity to commit the crime but not that he did so. He admits that he knew the victim, that he had been to the Quijano home, and that he had inquired about the cost of a hired murderer, but claims that evidence did not prove he committed the crime.

We conclude that sufficient evidence existed supporting the conspiracy and the special circumstance murder convictions. While Torres did not positively identify Alvarado as the man who spoke to Sanchez, Alvarenga, and Monroy, we find that his testimony was consistent with the accomplice testimony such that it tended to connect

Alvarado to the conspiracy and the murder. Torres's testimony corroborated Monroy and Alvarenga's testimony as to their description of their encounter with Alvarado on 84th Street and their discussion of the murder plan. Torres testified that he was with Alvarenga on 84th Street on the night of the murder when an older, dark-skinned Hispanic man who looked like Alvarado walked up to Alvarenga. Torres also testified that Sanchez spoke to the man after he arrived in the brown van. Thereafter, Torres, Sanchez, Alvarenga, and Monroy followed the man to a parked car where the man spoke to Sanchez, Alvarenga, and Monroy. Torres also corroborated accomplice testimony that they picked up a gun and drove Sanchez's brown van to commit the murder. Torres testified that after the man left, Sanchez, Alvarenga, and Monroy talked about getting a gun to go on a mission. The three then drove off in Sanchez's brown van.

Moreover, as previously mentioned, the testimony of a nonaccomplice who is granted immunity, such as Bailey, may be relied upon by the jury. (*People v. Hampton* (1999) 73 Cal.App.4th 710, 722.) Bailey's testimony is consistent with the accomplice testimony and tended to connect Alvarado with the conspiracy and the murder. His testimony corroborated that the conspiracy existed, that Sanchez and his accomplices drove the brown van during the crime, that Sanchez used a gun to kill the victim, and that someone paid Sanchez a large amount of cash for the hit. Bailey testified that Sanchez, Monroy and Alvarenga drove to his house in Sanchez's brown van in April 2005. Sanchez asked him to hold the envelope containing \$9,000 cash, approximately the amount that the accomplices said that Alvarado promised to pay Sanchez. Sanchez told Bailey that they had killed a man on behalf of his wife and that he waited for the victim outside his house. Sanchez told Bailey that they were paid for killing the man.

Also, Tejeda's testimony corroborated the accomplice testimony as to the use of the van and a gun during the murder and the clothing worn by Sanchez. She testified that she saw a van with a covering on the driver's side rear window parked in a red zone under a street light. She parked her car, then heard three gunshots as she opened her door. She saw a young man wearing a black, hooded sweatshirt, running toward the

intersection. She saw a man's body hunched over the steering wheel inside the car parked at the intersection.

Moreover, cell phone records corroborated the testimony of the accomplices that Alvarado and Quijano contacted each other by cell phone during and after the murder. The records also corroborated that: Alvarado gave his cell phone to Sanchez; Monroy and Alvarenga called their mothers and Monroy's girlfriend; Sanchez spoke to Quijano when they arrived at her residence and after the murder; and Sanchez returned the cell phone to Alvarado after the murder.

Finally, Alvarado dismisses his own admissions as evasive and conflicting. But, "[a] defendant's own testimony may be sufficient corroborative testimony, and false or misleading statements made to authorities may constitute corroborating evidence. [Citation.]" (People v. Vu (2006) 143 Cal.App.4th 1009, 1022; People v. Riggs (2008) 44 Cal.4th 248, 313 [a defendant's statements can corroborate accomplice testimony].) We conclude that Alvarado's admissions constituted sufficient corroboration of accomplice testimony. Alvarado admitted that Quijano asked him to find someone to kill her husband. He agreed to help her and approached two persons unsuccessfully. He and Quijano decided on a price of \$8,000. He offered the job first to Alvarenga, then to Sanchez, who agreed to commit the murder. Alvarado told Quijano that he had found a killer, showed Sanchez the cash, and gave Sanchez a picture of Reynaldo and directions to his house. Alvarado called Quijano to tell her that Sanchez was on his way. When Sanchez returned, Alvarado called Quijano, who informed him that Reynaldo was sleeping in the house. He then gave Sanchez the cell phone and instructed him to call Quijano when he arrived at the house again. Upon Sanchez's return and confirmation by Quijano that Reynaldo was dead, Alvarado paid Sanchez \$8,000. It was the jury's duty to evaluate Alvarado's credibility (*People v. Ochoa, supra*, 6 Cal.4th at p. 1206), and it acted within its province in rejecting Alvarado's conflicting testimony at trial.

We conclude that substantial evidence supports Alvarado's conspiracy and special circumstance murder convictions.

II. The trial court did not abuse its discretion in denying Alvarado's request for the appointment of an expert to examine Alvarenga

A. The trial court properly rejected Alvarado's request for the appointment of an expert to assist his preparation for cross-examination

Alvarado urges that the trial court deprived him of a meaningful opportunity to present a complete defense when it denied his request for the appointment of an expert to examine Alvarenga. He claims he "needed the psychologist's report to prepare for cross-examination, to impeach Alvarenga's direct testimony in order to mount a complete defense." We disagree and conclude that the trial court did not abuse its discretion in denying Alvarado's request for the appointment of an expert to examine Alvarenga.

The constitutional right to counsel includes the right to reasonably necessary ancillary defense services, including those necessary in the preparation of a defense. (*Corenevsky v. Superior Court* (1984) 36 Cal.3d 307, 319.) According to Evidence Code section 730, the court may appoint an expert to investigate, to render a report and to testify as an expert at the trial relative to the fact or matter as to which the expert evidence is required. "A defendant seeking appointment of an expert under Evidence Code section 730 must make a showing of need and the decision to grant or deny the request rests in the sound discretion of the trial court." (*People v. Crandell* (1988) 46 Cal.3d 833, 862.)

At trial, Alvarenga's attorney provided the trial court and Alvarado's counsel with a copy of a report that was specifically generated to support Alvarenga's plea to the district attorney's office that it not seek the death penalty. The report indicated Alvarenga was "on the high end of almost retarded. And he has certain deficits such as short-term memory." Alvarado complains that he "needed the help of a psychologist to describe the tests and the ability of Alvarenga to accurately recollect and remember what was said to him and what he passed on to other persons."

We conclude that Alvarado has failed to establish the requisite need for an expert to help him prepare for cross-examination. (*People v. Young* (1987) 189 Cal.App.3d 891,

904 [trial court did not abuse its discretion in denying the motion for appointment of a psychiatrist to assist defense counsel and framing questions].) Alvarado's attorney ably cross-examined Alvarenga about his memory and shortcomings. Alvarenga readily admitted on cross-examination: to his deficits in mental ability; that he did not have a good memory; that he believed his marijuana smoking affected his memory; that he did not finish high school; and that he had made inconsistent statements to the police. As the trial court noted, the report on Alvarenga was generated to support a request that the death penalty not be imposed, and did not raise issues as to his competence. Furthermore, Alvarenga's mental deficits were readily apparent to the jury, which was instructed to assess Alvarenga's credibility and evaluate his demeanor.

We conclude that the trial court did not abuse its discretion in denying Alvarado's request for a psychologist's report to prepare for cross-examination.

B. The trial court did not abuse its discretion in refusing to allow the expert to testify

Alvarado also contends that the trial court improperly denied his request for the appointment of an expert to examine Alvarenga because "the psychologist himself could (and would have) testified to the effect [of] a low IQ and deficiencies in memory, cognition and recall have on witnesses." He contends the expert could have explained the ramifications of Alvarenga's mental deficiencies and provided grounds for impeachment of the statements he made on direct examination. We disagree and conclude that the trial court did not abuse its discretion in refusing to allow the expert to testify to the effect of Alvarenga's low IQ on his testimony.

An expert witness may testify to a subject that is sufficiently beyond common experience so that the opinion of an expert would assist the trier of fact. (Evid. Code, § 801, subd. (a).) Expert opinion may be admitted when it will assist the jury, and will be excluded when it would add nothing to the jury's common fund of information. (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1300.) A trial court has broad discretion in determining whether to admit expert testimony pursuant to this section. (*Id.* at p. 1299.)

We agree with the trial court's conclusion that the expert's proposed testimony would not have assisted the jury or added to the jury's common fund of information. Alvarenga's offer of proof was that the expert would testify as to the relevance of Alvarenga's testimony, his credibility, and his ability to appreciate reality. But, as the trial court repeatedly pointed out, the jury could evaluate Alvarenga's demeanor, credibility, and mental deficits itself. And, as Alvarado acknowledges, expert psychiatric testimony is generally disfavored. (*People v. Marshall* (1996) 13 Cal.4th 799, 835 [inconsistent and exaggerated statements are not a basis for psychiatric testimony to impeach a witness]; *In re Darrell T.* (1979) 90 Cal.App.3d 325, 335 [compulsory psychiatric or psychological examination to assess credibility of victim in sexual offense prosecution is prohibited].) Moreover, if a witness has been declared competent, or if no objection is urged to his competency, the courts will reject expert psychiatric testimony. (*Ballard v. Superior Court (People)* (1966) 64 Cal.2d 159, 173.) As Alvarado conceded before the trial court, Alvarenga's competence was not at issue.

We conclude that the trial court did not abuse its discretion in refusing to appoint an expert.

III. The trial court did not err in refusing Alvarado's request for a pinpoint instruction

Alvarado next contends that the trial court deprived him of a fair trial when it denied his request for a pinpoint instruction that the overt acts listed in the jury instructions were not proven facts. We conclude that the trial court did not err in refusing his request for a pinpoint instruction.

We first note that Alvarado's trial counsel appears to have raised, then abandoned his objection to CALCRIM No. 563, which listed all the overt acts. (*People v. Danielson* (1992) 3 Cal.4th 691, 729 [defendant waived issue on appeal by failing to request a ruling on earlier objection or by renewing that objection].) Indeed, Alvarado's counsel admitted at the time he made the objection that "[he did not] know how well taken [the objection] is." The record shows that Alvarado's counsel objected to CALCRIM No. 563 on the ground that listing the overt acts as proven was overwhelming and led irresistibly to a

guilty verdict. The trial court explained that: it was following the CALCRIM format; the jury needed to be informed of the overt acts; the alternative of giving a copy of the information to the jury was not satisfactory; the jury instruction provided a handy checklist for the jury; and the jury instruction did not represent the overt acts as proven facts, but only what the People must prove. Alvarado's counsel then stated: "I can take care of it in argument."

Even if no waiver occurred, the trial court did not err in giving the challenged instruction. A conspiracy consists of two or more persons conspiring to commit any crime. (§ 182.) The defendant and another person must have the specific intent to agree or conspire to commit an offense, as well as the specific intent to commit the elements of that offense, together with proof of the commission of an overt act by one or more of the parties to the agreement in furtherance of the conspiracy. (§ 184; *People v. Russo* (2001) 25 Cal.4th 1124, 1131.) The trial court has a duty to instruct on every element of the crime. (*People v. Breverman* (1998) 19 Cal.4th 142, 154.) Thus, the People had to prove, and trial court had to instruct on, the requirement that an overt act was committed by one or more of the conspirators to carry out the object of the conspiracy. As the trial court indicated, the jury instruction plainly stated that the People had to *prove* the overt acts, including that Quijano met with Alvarado to inquire about having Reynaldo killed, that Quijano paid Alvarado \$8,000 in advance to kill Reynaldo, and that Alvarado contacted Alvarenga and Sanchez and asked them to murder Reynaldo in exchange for money. The jury instruction did not present the overt acts as proven facts.

Nevertheless, Alvarado complains that he was prejudiced, even though he acknowledges that juries are presumed to understand and heed the trial court's instructions. (*People v. Harris* (1994) 9 Cal.4th 407, 426.) However, Alvarado's speculation that the jury could not help but treat the allegations as established facts does not convince us that he was prejudiced.

We conclude that the trial court did not abuse its discretion in denying Alvarado's request for the appointment of an expert to examine Alvarenga.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

	, P. J.
	BOREN
We concur:	
, J.	
DOI TODD	
, J.	
CHAVEZ	